

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JAMES MURPHY,

Plaintiff,

-v-

FOGO DE CHAO 53RD STREET, NEW YORK LLC,

Defendant.  
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19 Civ. 10320 (PAE)

ORDER OF DISMISSAL

PAUL A. ENGELMAYER, District Judge:

On November 6, 2019, plaintiff filed the complaint in this action. Dkt. 1. On November 22, 2019, service of process was executed on defendant. *See* Dkt. 6. On May 13, 2020, plaintiff filed an amended complaint. Dkt. 29. On May 27, 2020, Defendant filed a motion to dismiss the amended complaint in lieu of answer. Dkt. 32.

On July 21, 2020, at the parties' joint request, the Court stayed this matter pending the Second Circuit's decision *Calcano v. Swarovski North America Ltd.*, 36 F.4th 68, 72 (2d Cir. 2022). Dkt. 38. The Court also administratively closed defendant's pending motion to dismiss. *Id.* The parties were directed to file a joint status update every 90 days and within 7 days of a decision by the Circuit. *Id.* On June 8, 2022, the parties alerted the Court to a decision in *Calcano*. Dkt. 49.


On June 14, 2022, the Court issued an order to the parties to undertake next steps in this matter in light of *Calcano*. Dkt. 50. Neither party took further steps in this litigation per that order.

On August 17, 2022, the Court issued an order directly to plaintiff to show cause by August 22, 2022 as to why this action should not be dismissed for failure to prosecute under Federal Rule of Civil Procedure 41. Dkt. 51. Plaintiff has not responded or made any filing following the order to show cause.

Accordingly, under Federal Rule of Civil Procedure 41(b) and the Court's inherent power, *see Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–32 (1962), the Court hereby dismisses this case, without prejudice, for the plaintiff's failure to prosecute.

The Clerk of Court is respectfully directed to close this case.

SO ORDERED.

  
Paul A. Engelmayer  
United States District Judge

Dated: August 23, 2022  
New York, New York